

REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 1-8, 10-12, 14-25, 27-29, and 31-46 are currently pending.

In the outstanding Office Action, Claims 1-3, 5-7, 10-12, 14, 15, 18-20, 22-24, 27-29, 31, and 32 were rejected under 35 U.S.C. §103(a) as unpatentable over Briffe et al. (U.S. Patent No. 6,112,141, hereinafter “Briffe”) in view of Snyder et al. (U.S. Patent No. 6,664,989, hereinafter “Snyder ‘989”), Marks et al. (U.S. Patent No. 5,699,082, hereinafter “Marks”), and Oder et al. (U.S. Patent No. 5,475,594, hereinafter “Oder”); Claims 8 and 25 were rejected under 35 U.S.C. §103(a) as unpatentable over Briffe in view of Snyder ‘989, Marks, Oder, and Westerman (U.S. Patent No. 6,404,443); Claims 4, 16, 21, 33, 35, and 36 were rejected under 35 U.S.C. §103(a) as unpatentable over Briffe, Snyder ‘989, Marks, and Oder in view of Snyder (U.S. Patent No. 6,381,519, hereinafter “Snyder ‘519”); Claims 37-44 were rejected under 35 U.S.C. §103(a) as being unpatentable over Snyder ‘989 in view of Briffe; and Claims 17, 34, 45, and 46 were rejected under 35 U.S.C. §103(a) as unpatentable over Briffe in view of Snyder ‘989, Marks, Oder, and Muller et al. (U.S. Patent No. 6,072,473, hereinafter “Muller”).

With respect to the rejection of Claims 1 and 18 under 35 U.S.C. §103(a) as unpatentable over Briffe, Snyder ‘989, Marks, and Oder, that rejection is respectfully traversed.

Claim 1 recites in part:

    a display configured to display at least one window including a plurality of responsive objects respectively associated with only one of multiple functions of the at least one system of the aircraft;

    a first cursor control device including a continuous cursor moving mechanism configured to move a cursor in a continuous manner on the display so as to designate a responsive object; and

a second cursor control device configured to be activated during an emergency mode of the aircraft and including a discrete cursor moving mechanism configured to move the cursor in a discrete and cyclical manner on the display, responsive object by responsive object, so as to designate a responsive object.

The outstanding Office Action stated that Briffe is cited as “a second cursor control device” as recited in Claim 1, not Oder. However, Briffe is conceded as not teaching all the elements of such a cursor control device, and Oder is relied on for some of these features.<sup>1</sup> However, as previously noted, Oder describes an information processing system that displays *lists* of urgent tasks that may be selected if an abnormal event is detected. Thus, an operator of the system described by Oder is forced to select a list of *multiple* tasks that will be executed, rather than a single function to be executed. The outstanding Office Action contested this assertion, but cited several portions of Oder that all refer to the processing of a *list* of tasks. For example:

the activation of a key making it possible to position a marker which designates *the first task of the list* to be carried out, thus *provoking the launching of processing of the list*, and

the *movement of said marker from one task to another* following activation of a key of said terminal by the operator in order to validate the task designated by said marker when the said task has been executed and in order to have the marker designate the next task to be carried out.<sup>2</sup>

Further:

Furthermore, when the central processing unit 2 receives an abnormal event corresponding, for example, to a malfunction, of one of the other items of the embarked electronic equipment, an arrow 66 pointing onto the key "CHECK LIST" 31 is displayed on the screen (FIG. 4). The purpose of this arrow is to induce the operator to press on this key. If in this state the key "CHECK LIST" 31 is activated, the screen shown on FIG. 9 appears. This screen represents the list of the titles of the *lists* of urgent tasks and an index 68 is prepositioned on the title of the *list* to be executed so as to

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<sup>1</sup> See the outstanding Office Action at page 12, line 3 to page 13, line 2.

<sup>2</sup> Oder, column 2, lines 46-54. (Emphasis added).

correctly react to the malfunction. This disposition makes it possible to inform the operator of the *list* best adapted to the context, whilst allowing him the choice of selecting another *list* by means of the displacement key 43. When the operator presses on the key "ENTER" 17, the *selected list* appears on the screen so as to be able to be processed in the same way as the list shown on FIG. 6. However, at the end of processing of the *list*, the central processing unit 2 is able to chain other *lists* of tasks according to the change of this abnormal situation. By means of these dispositions, the *lists* of urgent tasks are rapidly accessible independent of their frequency of use by taking account of the context of the flight.<sup>3</sup>

Thus, Oder clearly teaches that *only lists of tasks are available* to an operator in an emergency mode. Thus, not only does Oder fail to teach "a second cursor control device" as recited in Claim 1, Oder teaches away from such a feature. Further, it is respectfully submitted that neither Snyder '989 nor Marks describe "a second cursor control device" as recited in Claim 1 either.

Moreover, as Oder teaches away from the invention recited in Claim 1, Oder does not provide the motivation to perform the proposed modification of Briffe. In other words, an attempt to bring in the isolated teaching of Oder's emergency list activation into Briffe's flight deck would amount to improperly picking and choosing features from different references without regard to the teachings of the references as a whole.<sup>4</sup> While the required evidence of motivation to combine need not come from the applied references themselves, the evidence must come from *somewhere* within the record.<sup>5</sup> In this case, the record fails to support the proposed modification of Briffe.

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<sup>3</sup>Oder, column 2, lines 46-54. (Emphasis added).

<sup>4</sup>See *In re Ehrreich* 590 F.2d 902, 200 USPQ 504 (CCPA, 1979) (stating that patentability must be addressed "in terms of what would have been obvious to one of ordinary skill in the art at the time the invention was made in view of the sum of all the relevant teachings in the art, not in view of first one and then another of the isolated teachings in the art," and that one "must consider the entirety of the disclosure made by the references, and avoid combining them indiscriminately.")

<sup>5</sup>*In re Lee*, 277 F.3d 1338, 1343-4, 61 USPQ2d 1430 (Fed. Cir. 2002) ("The factual inquiry whether to combine references ... must be based on objective evidence of record. ... [The] factual question of motivation ... cannot be resolved on subjective belief and unknown authority. ... Thus, the Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion").

In rejecting a claim under 35 U.S.C. §103(a), the U.S.P.T.O. must support its rejection by "substantial evidence" within the record,<sup>6</sup> and by "clear and particular" evidence<sup>7</sup> of a suggestion, teaching, or motivation to combine the teachings of different references. Not only is there no substantial evidence, nor clear and particular evidence, within the record of motivation for modifying Briffe with Oder, Oder clearly teaches away from the proposed modification. Without such motivation and absent improper hindsight reconstruction,<sup>8</sup> a person of ordinary skill in the art would not be motivated to make the proposed modification, and thus Claim 1 is patentable over the applied references.

In addition, it is respectfully submitted that the outstanding Office Action employs improper hindsight in rejecting Claim 1. In asserting that "a second cursor control device" is taught by the references, *four* references are needed to create the claimed cursor control device. Thus, the outstanding Office Action seems to use improper hindsight by rejecting Claim 1 by constructing a solution based on the teachings of Claim 1, which is against established precedent. See *In re Lowry*, 32 F.3d 1579, 1583, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) holding "[t]o establish a prima facie case of obviousness, the burden of establishing the absence of a novel, nonobvious functional relationship rested with the Patent and Trademark Office," and "[t]he claimed invention involved an organization of information and its interrelationships that the prior invention neither disclosed nor suggested." See also *Monarch Knitting Mach. Corp. v. Sulzer Morat GmbH*, 139 F.3d 877, 880, 45 USPQ2d 1977,

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<sup>6</sup>*In re Gartside*, 203 F.3d 1305, 53 USPQ2d 1769 (Fed. Cir. 2000) (holding that, consistent with the Administrative Procedure Act at 5 U.S.C. §706(e), the CAFC reviews the Board's decisions based on factfindings, such as 35 U.S.C. §103(a) rejections, using the 'substantial evidence' standard because these decisions are confined to the factual record compiled by the Board.)

<sup>7</sup>*In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999) ("We have noted that evidence of a suggestion, teaching, or motivation to combine may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved, although 'the suggestion more often comes from the teachings of the pertinent references.' The range of sources available, however, does not diminish the requirement for actual evidence. That is, the showing must be clear and particular." ) (Emphasis added).

<sup>8</sup>See MPEP §2141, stating, as one of the tenets of patent law applying to 35 U.S.C. §103, that "[t]he references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention."

1981 (Fed. Cir. 1998) holding “[d]efining the problem in terms of its solution reveals improper hindsight in the selection of the prior art relevant to obviousness.”

As the cited references do not teach or suggest each and every element of Claim 1, and there is no suggestion or motivation to make the proposed combination, Claim 1 (and Claims 2-8, 10-12, and 14-17 dependent therefrom) is patentable over Briffe, Snyder ‘989, Marks, and Oder.

Amended Claim 18 recites similar elements as Claim 1. Accordingly, Claim 18 (and Claims 19-25, 27-29, and 31-36 dependent therefrom) is also patentable over Briffe, Snyder ‘989, Marks, and Oder for at least the reasons described above with respect to Claim 1.

With regard to the rejection of Claims 8 and 25 as unpatentable over Briffe, Snyder ‘989, Marks, and Oder in view of Westerman, it is noted that Claims 8 and 25 are dependent from Claims 1 and 18, respectively, and thus are believed to be patentable for the reasons discussed above. Further, it is respectfully submitted that Westerman does not cure any of the above-noted deficiencies of Briffe, Snyder ‘989, Marks, and Oder. Accordingly, it is respectfully submitted that Claims 8 and 25 are patentable over Briffe, Snyder ‘989, Marks, and Oder in view of Westerman.

With regard to the rejection of Claims 4, 16, 21, 33, 35, and 36 as unpatentable over Briffe, Snyder ‘989, Marks, and Oder in view of Snyder ‘519, it is noted that Claims 4, 16, 21, 33, 35, and 36 are dependent from Claims 1 and 18, and thus are believed to be patentable for the reasons discussed above. Further, it is respectfully submitted that Snyder ‘519 does not cure any of the above-noted deficiencies of Briffe, Snyder ‘989, Marks, and Oder. Accordingly, it is respectfully submitted that Claims 4, 16, 21, 33, 35, and 36 are patentable over Briffe, Snyder ‘989, Marks, and Oder in view of Snyder ‘519.

With regard to the rejection of Claims 17 and 34 as unpatentable over Briffe, Snyder ‘989, Marks, and Oder in view of Muller, it is noted that Claims 17 and 34 are dependent

from Claims 1 and 18, respectively, and thus are believed to be patentable for the reasons discussed above. Further, it is respectfully submitted that Muller does not cure any of the above-noted deficiencies of Briffe, Snyder '989, Marks, and Oder. Accordingly, it is respectfully submitted that Claims 17 and 34 are patentable over Briffe, Snyder '989, Marks, and Oder in view of Muller.

With respect to the rejection of Claim 37 under 35 U.S.C. §103(a) as being unpatentable over Snyder '989 in view of Briffe, that rejection is respectfully traversed.

Claim 37 recites in part, “a third moving mechanism configured to move said cursor from window to window using an auxiliary displacement key.”

The outstanding Office action apparently cited CCD 104 of Snyder '989 as “a third moving mechanism.”<sup>9</sup> However, it is respectfully submitted that Snyder '989 does not teach or suggest that any part CCD 104 includes “an auxiliary displacement key” which moves the cursor from window to window. At most, the outstanding Office Action alleges that Snyder '989 describes a cursor moving mechanism.<sup>10</sup> However, Claim 37 clearly recites “a third moving mechanism *configured to move said cursor from window to window using an auxiliary displacement key.*” As no portion of any reference is cited as describing such an auxiliary displacement key, Claim 37 (and Claims 38-46 dependent therefrom) is patentable over Snyder '989 in view of Briffe.

Further, Claims 39 and 40 recite subject matter that further defines over the cited references. Claims 39 and 40 recite in part “said cursor is displayed at a default location in a window after moving said cursor from one window to another window.” The outstanding Office Action cited column 3, line 49 to column 4, line 31, Figures 2 and 3 and cursors 210, 302/310 of Snyder '989 as describing this feature.<sup>11</sup> However, none of the cited portions of

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<sup>9</sup>See the outstanding Office Action at page 13, lines 3-6.

<sup>10</sup>See the outstanding Office Action at page 13, lines 5-6.

<sup>11</sup>See the outstanding Office Action at page 10, lines 12-14.

Snyder '989 relate to "a default position." In fact, neither Snyder '989 nor the outstanding Office Action provides exactly what the default position is for a cursor after moving from one window to another. Thus, as no portion of any reference has been provided teaching or suggesting "said cursor is displayed at a default location in a window after moving said cursor from one window to another window," Claims 39 and 40 further patentably define over the cited references.

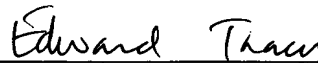
With regard to the rejection of Claims 45 and 46 as unpatentable over Briffe, Snyder '989, Marks, and Oder in view of Muller, it is noted that Claims 45 and 46 are dependent from Claim 37, and thus are believed to be patentable for the reasons discussed above. Further, it is respectfully submitted that Muller does not cure any of the above-noted deficiencies of Briffe and Snyder '989. Accordingly, it is respectfully submitted that Claims 45 and 46 are patentable over Briffe, Snyder '989, Marks, and Oder in view of Muller.

Consequently, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal Allowance. A Notice of Allowance for Claims 1-8, 10-12, 14-25, 27-29, and 31-46 is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicant's undersigned representative at the below listed telephone number.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.



Philippe J.C. Signore, Ph.D.  
Attorney of Record  
Registration No. 43,922

Customer Number  
**22850**

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 06/04)  
I:\ATTY\ET\245515US\245515US-AMD6.23.06.DOC

Edward Tracy  
Registration No. 47,998